



Respond to Fort Wright Office:
809 Wright's Summit Parkway
Suite 120
Fort Wright, Kentucky 41011

Benjamin G. Dusing
(859) 635-5000
bdusing@bgdlaw.com

April 26, 2021

VIA CM-ECF

Honorable Ronnie Abrams
United States District Court
Southern District of New York
Thurgood Marshall United States Courthouse
40 Foley Square
New York, New York 10007

Re: United States v. Michael Hild, et al., *No. 19-cr-602 (RA)*

Dear Judge Abrams:

The defense submits the instant letter brief in response to the Government's letter brief dated April 24, 2021 proposing an addition to the Court's proposed jury charge to the effect that a disclaimer does not render a representation immaterial as a matter of law. The defense respectfully objects to the Government's proposed instruction.

The Government's proposed instruction is simply not supported by law. It is certainly not supported by the legal authority cited by the Government. Only one, the *Weaver* decision, involves a written disclaimer of the kind involved in the instant case. The *Weaver* decision is distinguishable because *inter alia*, in that case unlike in the instant case – there were oral representations made inconsistent with the language of the disclaimer. The other authorities by the Government do not involve written disclaimers per se, but other written terms intended to “soften” otherwise material, intentionally-incorrect representations made to unsuspecting purchasers. Furthermore, the cases cited by the Government address the issue whether a disclaimer or other “softening” language can render an otherwise material representation immaterial as a matter of law. The issue here in the instant case as concerns Live Well Financial's disclaimer is whether Live Well Financial misrepresented the value of the bonds to IDC (or, indirectly perhaps, its lenders) as an issue of fact. The cited authorities are therefore inapposite for this basic reason. The Court's proposed version of the relevant charge is grounded in law in its current form. The

Honorable Ronnie Abrams

April 26, 2021

Page 2

defense objects to the Government's proposed modification and requests the Court instruct the jury as proposed by the Court.

Respectfully submitted,

Benjamin G. Dusing
Counsel for Michael Hild

By: _____/s/_____
Benjamin G. Dusing
Brandy K. Lawrence

cc: All Counsel of Record (by ECF)